

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
)	CS Docket No. 02-52
Appropriate Regulatory Treatment for)	
Broadband Access to the Internet Over)	
Cable Facilities)	
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REPLY COMMENTS OF THE CITY OF CORPUS CHRISTI, TEXAS

These comments are filed by the City of Corpus Christi, Texas in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Corpus Christi, Texas believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

The City of Corpus Christi, Texas is a City of approximately 290,000. It is served by Time Warner Cable which has approximately 100,000 subscribers. It is also served by ClearSource Inc. which has approximately 6000 cable subscribers. Each cable company offers cable modem service in our community.

2. Our ClearSource franchise and cable modem service.

The ClearSource franchise was issued in 1999. Section 3.1 of the Franchise provides: “As compensation for this Franchise and in consideration of permission to use the Public Right-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, Grantee shall pay to the City on an annual basis throughout the term of this Franchise, a sum totaling five percent (5%) of Grantee’s Gross Revenues. ”

The City of Corpus Christi Master Cable Services Regulatory Ordinance defines “Cable System” as “a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service to multiple Subscribers within the Franchise Area but such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves Subscribers without using any public Right-of-Way; or
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers.”

Section 3.4 of the Master Cable Services Regulatory Ordinance defines “Cable Service”or “Service” as:

- A. The one-way transmission to subscribers of (i) video programming, (ii) other programming service; or (iii) other Services agreed to in a Franchise Agreement unless lawfully determined not to be a Cable Service.
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and

C. For purposes of this Ordinance, unless determined otherwise under applicable federal law, Cable Internet Service shall be considered Cable Service.

Section 3.3 of the Master Cable Services Regulatory Ordinance defines “Cable Internet Service” as “any Cable Service offered by a Grantee whereby persons receive access to the Internet through the Cable System.”

Pursuant to these provisions, the City of Corpus Christi is entitled to receive franchise fees on cable modem service from ClearSource. We received approximately \$58,500 in cable modem franchise fees from ClearSource in 2001. These payments were made in consideration of the grant of the franchise for use of the public right-of-way to provide cable modem service. We estimate that we will lose at least \$ 58,500 each year if we cannot charge a fee on ClearSource revenues from cable modem service.

Neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service by Time Warner in our community.

3. Our Time Warner franchise and cable modem service

The City granted a cable franchise to Athena Cablevision in 1981, (“the 1981 franchise”). Over the years, the City Council authorized several franchise transfers, first to TCI Cablevision, then AT&T, then most recently to Texas Cable Partners (Time Warner Cable.) The Franchise had a term of 20 years. The franchise was recently renewed for a 15 year term (“the 2002 franchise”). The effective date of the renewal is August 25, 2002.

The 1981 franchise did not directly reference cable modem service. However, under the 1981 franchise the definition of gross revenues was broad enough to include cable modem service. Section 2 (11) defined “gross annual revenues” as “all revenues derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, and any person in which the Grantee has a financial interest, from providing cable television services within the City. The term shall include, but not be limited to, installation and reconnection fees, subscriber fees for basic service,

charges for lease of channels, revenues from advertising, and revenue from pay television service, converter sales or rentals, studio rental, and production equipment and personnel fees. The term shall not include revenues received from any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by any city, state, or other governmental unit and collected by the Grantee for such governmental unit. ”

The 2002 franchise has language similar to the ClearSource franchise. Specifically, Section 3.1 of the 2002 franchise states: “As compensation for this Franchise and in consideration of permission to use the Right-of-Way of the City for the construction, operation, maintenance and reconstruction of the Cable System, and to defray the costs of Franchise obligations, Grantee shall pay to the City on an annual basis throughout the term of this Franchise, a sum totaling five percent (5%) of Grantee’s Gross Revenues.”

The City of Corpus Christi Master Cable Services Regulatory Ordinance defines “Cable System” as a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service to multiple Subscribers within the Franchise Area but such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves Subscribers without using any public Right-of-Way; or
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers.

Section 3.4 of the Master Cable Services Regulatory Ordinance defines “Cable Service” or “Service” as:

- A. The one-way transmission to subscribers of (I) video programming, (ii) other programming service; or (iii) other Services agreed to in a Franchise Agreement unless lawfully determined not to be a Cable Service.
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and
- C. For purposes of this Ordinance, unless determined otherwise under applicable federal law, Cable Internet Service shall be considered Cable Service.

Section 3.3 of the Master Cable Services Regulatory Ordinance defines “Cable Internet Service” as “any Cable Service offered by a Grantee whereby persons receive access to the Internet through the Cable System.”

Pursuant to the provisions in the 1981 franchise and the 2002 franchise, the City of Corpus Christi is entitled to receive franchise fees on cable modem service from Time Warner. We received \$130,000 in cable modem franchise fees from Time Warner in 2001. These payments were made in consideration of the grant of the franchise for use of the public right-of-way to provide cable modem service.

By letter dated March 27, 2002, Time Warner Cable advised the City of Time Warner’s intent to cease collection and payment of franchise fees on revenues derived from the provision of cable modem service based on the FCC’s Declaratory Ruling and Notice of Proposed Rulemaking of March 14, 2002. The City did not agree with Time Warner and advised Time Warner by letter dated April 9, 2002. The City believed Time Warner’s actions were premature and contrary to the franchise terms. Further, the City believes cable modem service should not be excluded as a source of revenue subject to franchise fees. There is no reasonable purpose in having some services of a cable operator subject to franchise fees and others not. This will lead to an erosion of legitimate compensation payment for private use of public property.

Neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service by Time Warner in our community.

4. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. Section 7.10 of the Master Cable Services Regulatory Ordinance (which applies to all franchised cable operators) provides that the cable operator will provide at least annual notice of billing and complaint procedures, including name, address and telephone number of the City. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call the City with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

5. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible.

We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. The City of Corpus Christi, Texas provides computers for internet access at all public libraries and has adopted e-government initiatives. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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